Comments of Larry Tucker

Jim, I have set forth in track changes mode the edits and questions I have. I have not looked at Telecom Companies comments but will do so before the meeting tonight. My goal for tonight's meeting is to walk through each page of the Ordinance, hearing from staff and then the stakeholders, perhaps even one issue at a time. I want to get into the specifics of the language so that, hopefully, the Commission can give guidance on the issues and staff can have a cleaned up version back for review, hopefully in a couple of weeks. But that may not be possible depending on the amount of redrafting that will be required. For now, please distribute to the Commission and the stakeholders, and make available to the public, as soon as you can and we will see what happens tonight. Thanks. Larry

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Chapter 20.49 – Wireless Telecommunications Facilities

Sections

20.49.010 – Purpose

A. The purpose of this Chapter is to provide for the installation, modification, operation and maintenance of ~~wireless telecommunication facilities ("~~Telecom Facilities~~")~~ on public and private property consistent with state and federal law while ensuring public safety, reducing the visual effects of ~~t~~Telecom Facilities~~equipment~~ on public streetscapes, protecting scenic, ocean and coastal public views, and otherwise mitigating the impacts of Telecom~~such f~~Facilities. More specifically, the regulations contained herein are intended to encourage:~~;~~ 1) ~~encourage~~ the location of Telecom Facilities~~Antennas~~ in non-residential areas, 2) ~~encourage~~ Collocation at new and existing Antenna sites, and 3) ~~encourage~~ Telecom Facilities to be located in areas where adverse visual impacts on the community and public views are minimized.

B. The provisions of this Chapter are not intended and shall not be interpreted to prohibit or to have the effect of prohibiting telecom services. This Chapter shall be applied to providers, operators, and maintainers of wireless services regardless of whether authorized by state or federal regulations. This Chapter shall not be applied in such a manner as to unreasonably discriminate among providers of functionally equivalent telecom services.

C. All Telecom Facilities approved under this Chapter shall utilize the most efficient and least obtrusive available technology in order to minimize the number of Telecom Facilities in the City and reduce their visual impact on the community and public views.

20.49.020 – Effect of Chapter

A. Regulatory Scope. These regulations are applicable to all Telecom Facilities providing voice and/or data transmission such as, but not limited to, cell phone, internet and radio relay stations.

B. Permit and/or Agreement Required. Prior to construction or modification of any Telecom Facility in the City, the applicant shall obtain a Minor Use Permit (MUP), Conditional Use Permit (CUP), Limited Term Permit (LTP), or Zoning Clearance (ZC), depending on the proposed location, Antenna Class, and method of installation, in accordance with Section 20.49.070 (Permit Review Procedures). Applicants who obtain a MUP, CUP, LTP, or ZC (and an encroachment permit, if required) for any Telecom Facility approved to be located on any City-owned property or City-held Trust property, shall enter into an agreement prepared and executed by the City Manager or its designee prior to construction of the Telecom Facility, consistent with Section 20.49.090 (Agreement for Use of City-owned or City-held Trust Property).

C. Exempt Facilities. The following types of facilities are exempt from the provisions of this Chapter:

1. Amateur radio antennas and receiving satellite dish antennas, and citizen band radio antennas regulated by Section 20.48.190 (Satellite Antennas and Amateur Radio Facilities).

2. Dish and other antennas subject to the FCC Over-the-Air Reception Devices ("OTARD") rule, 47 C.F.R. § 1.4000 that are designed and used to receive video programming signals from (a) direct broadcast satellite services, or (b) television broadcast stations, or (c) for wireless cable service.

3. During an emergency, as defined by Title 2 of the NBMC, the City Manager, Director of Emergency Services or Assistant Director of Emergency Services shall have the authority to approve the placement of a Telecom Facility in any district on a temporary basis not exceeding ninety (90) calendar days from the date of authorization. Such authorization may be extended by the City on a showing of good cause.

4. Facilities exempt from some or all of the provisions of this Chapter by operation of state or federal law to the extent so determined by the City.

5. Systems installed or operated at the direction of the City or its contractor.

6. Systems installed entirely within buildings for the sole purpose of providing wireless telecommunications services or data transmission services to building occupants.

D. Other Regulations. Notwithstanding the provisions of this Chapter, all Telecom Facilities within the City shall comply with the following requirements:

1. Rules, regulations, policies, or conditions in any permit, license, or agreement issued by a local, state or federal agency which has jurisdiction over the Telecom Facility.

2. Rules, regulations and standards of the Federal Communications Commission (FCC) and the California Public Utilities Commission (CPUC).

E. Regulations not in Conflict or Preempted. All Telecom Facilities within the City shall comply with the following requirements unless in conflict with or preempted by the provisions of this Chapter:

1. All applicable City design guidelines and standards.

2. Requirements established by any other provision of the Municipal Code and by any other ordinance and regulation of the City.

F. Legal Nonconforming Facility. Any Telecom Facility that is lawfully constructed, erected, or approved prior to the effective date of this Chapter that is operating in compliance with all applicable laws, and which Facility does not conform to the requirements of this Chapter shall be accepted and allowed as a legal nonconforming Facility if otherwise approved and constructed. Legal nonconforming Telecom Facilities shall comply at all times with the laws, ordinances, and regulations in effect at the time the application was deemed complete, and any applicable federal and state laws as they may be amended or enacted, and shall at all times comply with any conditions of approval.

20.49.030 – Definitions.

For the purposes of this Chapter, the following definitions shall apply:

A. Antenna. Antenna means a device used to transmit and/or receive radio or electromagnetic waves between earth and/or satellite-based systems, such as reflecting discs, panels, microwave dishes, whip antennas, Antennas, arrays, or other similar devices.

B. Antenna Array. Antenna Array means Antennas having transmission and/or reception elements extending in more than one direction, and directional Antennas mounted upon

and rotated through a vertical mast or tower interconnecting the beam and Antenna support, all of which elements are deemed to be part of the Antenna.

C. Antenna Classes. Antenna Classes are Telecom Facilities and the attendant Support Equipment separated into the following distinct classes:

1. Class 1 (Stealth/Screened): a Facility with Antennas mounted on an existing or proposed non-residential building or other structure not primarily intended to be an antenna support structure where Antennas and Support Equipment, including the base station, are fully screened so that they are not visible to the general public.

2. Class 2 (Visible): a Facility with Antennas mounted on an existing non-residential building, structure, pole, light standard, Utility Tower, Wireless Tower and/or Lattice Tower.

3. Class 3 (Public Right-of-Way Installations): a Facility with Antennas installed on a structure located in the public right-of-way.

4. Class 4 (Freestanding Structure): a Facility with Antennas mounted on a new freestanding structure constructed for the sole or primary purpose of supporting the Telecom Facility.

5. Class 5 (Temporary): a Facility including associated Support Equipment that is installed at a site on a temporary basis pursuant to a Limited Term Permit. A Class 5 installation may also be installed in connection with a special event upon the approval of a Special Events Permit pursuant to Chapter 11.03 without a Limited Term Permit.

D. Base Station. Base Station means the electronic equipment at a Telecom Facility installed and operated by the Telecom Operator that together perform the initial signal transmission and signal control functions. Base Station does not include the Antennas and Antenna support structure, or the Support Equipment, nor does it include any portion of DAS.

E. City-owned or City-held Trust Property. City-owned or City-held Trust Property means all real property and improvements owned, operated or controlled by the City, other than the public right-of-way, within the City's jurisdiction, including but ~~is~~ not limited to City Hall, Police and Fire facilities, recreational facilities, parks, beaches (?), libraries, monuments, signs, streetlights and traffic control standards.

F. Collocation. Collocation means an arrangement whereby multiple Telecom Facilities are installed on the same building or structure.

G. Distributed Antenna System, DAS. Distributed Antenna System (DAS) means a network of one or more Antennas and fiber optic nodes typically mounted to streetlight poles, or utility structures, which provide access and signal transfer services to one or more third-party wireless service providers. DAS also includes the equipment location, sometimes called a

"hub" or "hotel" where the DAS network is interconnected with third-party wireless service providers to provide the signal transfer services.

H. FCC. FCC means the Federal Communications Commission, the federal regulatory agency charged with regulating interstate and international communications by radio, television, wire, satellite, and cable.

I. Feasible or Feasibly. Feasible or Feasibly means capable of being accomplished in a successful manner within a reasonable period of time, taking into account environmental, physical, legal and technological factors.

J. Lattice Tower. Lattice Tower means a freestanding open framework structure used to support Antennas, typically with three or four support legs of open metal crossbeams or crossbars.

K. Monopole. Monopole means a single free-standing pole or pole-based structure solely used to act as or support a Telecom Antenna or Antenna Arrays.

L. Operator or Telecom Operator. Operator or Telecom Operator means any person, firm, corporation, company, or other entity that directly or indirectly owns, leases, runs, manages, or otherwise controls a Telecom Facility or facilities within the City.

M. Public Right-of-Way. Public Right-of-Way or ("PROW") means the improved or unimproved surface of any street, or similar public way of any nature, dedicated or improved for vehicular, bicycle, and/or pedestrian related use. PROW includes public streets, roads, lanes, alleys, sidewalks, medians, parkways and landscaped lots.

N. Stealth or Stealth Facility. Stealth or Stealth Facility means a Telecom Facility in which the Antenna, and the Support Equipment, are completely hidden from view in a monument, cupola, pole-based structure, or other concealing structure which either mimics, or which also serves as, a natural or architectural feature. Concealing structures which are obviously not such a natural or architectural feature to the average observer do not qualify within this definition. A false tree is not a Stealth Facility.

O. Support Equipment. Support Equipment means the physical, electrical and/or electronic equipment included within a Telecom Facility used to house, power, and/or contribute to the processing of signals from or to the Facility's Antenna or Antennas, including but not limited to a base station, cabling, air conditioning units, equipment cabinets, pedestals, and electric service meters. Support Equipment does not include DAS, Antennas or the building or structure to which the Antennas or other equipment are attached.

P. Telecommunication(s) Facility, Telecom Facility, Telecom Facilities, Wireless Telecommunications Facility, or Facility. [Why not just pick one of these words and stick with it?]Telecommunication(s) Facility, Telecom Facility, Telecom Facilities, Wireless Telecommunications Facility, or simply Facility or Facilities means an installation that sends

and/or receives wireless radio frequency signals or electromagnetic waves, including but not limited to directional, omni-directional and parabolic antennas, structures or towers to support receiving and/or transmitting devices, supporting equipment and structures, and the land or structure on which they are all situated. The term does not include mobile transmitting devices, such as vehicle or hand held radios/telephones and their associated transmitting antennas.

Q. Utility Pole. Utility Pole means a single freestanding pole used to support services provided by a public or private utility provider.

R. Utility Tower. Utility Tower shall mean an open framework structure (see lattice tower) or steel pole used to support electric transmission facilities.

S. Wireless Tower. Wireless Tower means any structure built for the sole or primary purpose of supporting Antennas used to provide wireless services authorized by the FCC. A Distributed Antenna System (DAS) installed pursuant to a Certificate of Public Convenience and Necessity (CPCN) issued by the California Public Utilities Commission on a water tower, utility tower, street light, or other structures built or rebuilt or replaced primarily for a purpose other than supporting wireless services authorized by the FCC, including any structure installed pursuant to California Public Utility Code Section 7901, is not a Wireless Tower for purposes of this definition. For an example only, a prior-existing light standard which is replaced with a new light standard to permit the addition of Antennas shall not be considered a Wireless Tower, but rather a replacement light standard.

20.49.050 – Location Preferences.

A. Preferred Locations. To limit the adverse visual effects of and proliferation of new or individual Telecom Facilities in the City, the following list establishes the order of preference for the location and installation of Telecom Facilities, from highest priority location and technique to lowest.

1. Collocation of a new facility at an existing facility.
2. Class 1.
3. Class 2.
4. Class 3.
5. Class 4.
6. Class 5.

B. Prohibited Locations. Telecom Facilities are prohibited in the following locations:

1. On properties zoned for single-unit or two-unit residential development, including equivalent PC District designation.

2. On properties zoned for multi-unit residential development and mixed-use development where the maximum allowable number of dwelling units is four (4) units.

3. In the Open Space (OS) zoning district, unless Telecom Facilities are collocated on an existing Utility Tower within a utility easement area, or collocated on an existing Telecom Facility.

~~3.~~4. [Comment: Isn't it possible that there could be an appropriate place for a Telecom Facility in one of these zones, although not many places?]

~~4.~~5. On streetlights. [Comment: There is some language about streetlights elsewhere in this Ordinance that causes me to wonder if streetlights should be a prohibited location.]

C. Installations in the Public Right-of-Way. All Telecom Facilities proposed to be located in the public right-of way shall comply with the provisions of Title 13. Antenna installations on an existing or replacement streetlight [Comment: I thought streetlights were a prohibited location.]pole shall be compatible in design, scale, and proportion to streetlights and the pole on which they are mounted.

D. Collocation Installations. A new Telecom Facility proposed within one thousand (1,000) feet of an existing Telecom Facility shall be required to collocate on the same building or structure as the existing Telecom Facility.

1. Exception: If the reviewing authority determines, based on a preponderance of ~~compelling~~ evidence submitted ~~by the applicant~~, that Collocation of one or more new Telecom Facilities within one thousand (1,000) feet of an existing Telecom Facility is not Feasible, then such Collocation shall not be required.

2. Condition Requiring Future Collocation. In approving a Telecom Facility, the review authority may impose a condition of approval providing for future Collocation of Telecom Facilities by other carriers at the same site to the extent Feasible.

20.49.060 – General Development and Design Standards.

A. General Criteria. All Telecom Facilities shall employ design techniques to minimize visual impacts and provide appropriate screening to result in the least visually intrusive means of providing the service. Such techniques shall be employed to make the installation, appearance and operations of the Telecom Facility as visually inconspicuous as practicable~~possible~~ [Comment: Much is possible, but not always practicable]. To the greatest extent Feasible, Telecom Facilities shall be designed to minimize the visual impact of the Telecom Facility by means of location, placement, height, screening, landscaping, and

shall be compatible with existing architectural elements, building materials, other building characteristics, and the surrounding area.

In addition to the other design standards of this Section, the following criteria shall be considered by the review authority in connection with its processing of any MUP, CUP, LTP, or ZC for a Telecom Facility:

1. Blending. The extent to which the proposed Telecom Facility blends into the surrounding environment or is architecturally compatible and integrated into the structure.

2. Screening. The extent to which the proposed Telecom Facility is concealed or screened by existing or proposed new topography, vegetation, buildings or other structures.

3. Size. The total size of the proposed Telecom Facility, particularly in relation to surrounding and supporting structures.

4. Location. Proposed Telecom Facilities shall be located so as to utilize existing natural or man-made features in the vicinity of the Telecom Facility, including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening and blending with the predominant visual backdrop.

~~4.~~5. Collocation. In evaluating whether the Collocation of a Telecom Facility is Feasible, the criteria listed in 1-4 above shall be used to evaluate the visual effect of the combined number of Telecom Facilities at the proposed location.

B. Public View Protection. Telecom Facilities involving a site adjacent to an identified public view point or corridor, as identified in General Plan Policy NR 20.3 (Public Views), shall be reviewed to evaluate the potential impact to public views consistent with Section 20.30.100 (Public View Protection). [Comment: NR 20.3 allows for other public views to be identified in the future. Therefore, shouldn't the review process also be able to evaluate an impact to a public view that is not then listed in NR20.3?]

C. Height.

1. Telecom Facilities installed on buildings or other structures shall comply with the base height limit established in Part 2 (Zoning Districts, Allowable Uses, and Zoning District Standards) for the zoning district in which the Telecom Facility is located. [Comment: The staff report indicates that a new facility would be able to exceed the base height by 5'. Maybe I misunderstood the staff report, so please explain.]

2. Applications for the installation of Telecom Facilities proposed to be greater than the base height limit for the zoning district in which the Telecom Facility is located shall be subject to review and action by the Planning Commission. The Planning Commission may approve or conditionally approve a CUP for a Telecom Facility to exceed the base

height limit after making all of the required findings in Section 20.49.070.H (Permit Review Procedures).

3. All Telecom Facilities shall comply with Antenna height restrictions, if any, required by the Federal Aviation Administration, and shall comply with Section 20.30.060.E. (Airport Environs Land Use Plan ~~(AELUP)~~ for John Wayne Airport and Airport Land Use Commission ~~(ALUC)~~ Review Requirements) as may be in force at the time the Telecom Facility is permitted or modified.

4. Antennas shall be installed at the minimum height possible to provide average [Comment: Not sure what average is, but don't we want effective service?]service to the Telecom Operator's proposed service area. In any case, no Antenna or other telecom equipment or screening structure shall extend higher than the following maximum height limits:

    a. Telecom Facilities installed on streetlight standards, Utility Poles, Utility Towers or other similar structures within the public right-of-way shall not exceed 35 feet in height above the finished grade.

    b. Telecom Facilities may be installed on existing Utility Poles or Utility Towers that exceed 35 feet above the finished grade where the purposes of the existing Utility Pole or Utility Tower is to carry electricity or provide other wireless data transmission provided that the top of the Antenna does not extend above the top of the Utility Pole or Utility Tower.

    c. Telecom Facilities installed in ground-mounted flagpoles may be installed at a maximum height of 35 feet.

D. Setbacks. Proposed Telecom Facilities shall comply with the required setback established by the development standards for the zoning district in which the Telecom Facility is proposed to be located. Setbacks shall be measured from the part of the Telecom Facility closest to the applicable lot line or structure.

E. Design Techniques. Design techniques shall result in the installation of a Telecom Facility that is in scale with the surrounding area, screens~~hides~~ [Comment: The Ordinance has been using the word "screen" so I would recommend we stick with one word to describe the objective rather than introduce the word "hide" which could then be argued to mean something other than screen.] the installation from predominant views from surrounding properties, and prevents the Telecom Facility from visually dominating the surrounding area. Design techniques may include the following:

1. Screening elements to disguise, or otherwise hide the Telecom Facility from view from surrounding uses.

2. Painting and/or coloring the Telecom Facility to blend into the predominant visual backdrop.

3. Siting the Telecom Facility to utilize existing features (buildings, topography, vegetation, etc.) to screen or hide the Telecom Facility.

4. Utilizing simulated natural features (trees, rocks, etc.) to screen or hide the Telecom Facility.

5. Providing Telecom Facilities of a size that, as determined by the City, is not visually obtrusive such that any effort to screen the Telecom Facility would not create greater visual impacts than the Telecom Facility itself.

F. Screening Standards. For Collocation installations, the screening method shall be materially similar to those used on the existing Telecom Facility, and shall not diminish the screening of the Telecom Facility. If determined necessary by the review authority, use of other improved and appropriate screening methods may be required to screen the Antennas and Support Equipment from public view. The Following is a non-exclusive list of potential design and screening techniques that should be considered:

1. For Class 1 (Stealth/Screened) Antenna Installations:

   a. All Telecom Facility components, including all Antenna panels and Support Equipment, shall be fully screened, and mounted either inside the building or structure, or behind the proposed screening elements and not on the exterior face of the building or structure.

   b. Screening materials shall match in color, size, proportion, style, and quality with the exterior design and architectural character of the structure and the surrounding visual environment. If determined necessary by the reviewing authority, screening to avoid adverse impacts to views from land or buildings at higher elevations shall be required.

   c. In conditions where the Antennas and Support Equipment are installed within a new freestanding structure, (an architectural feature such as a steeple, religious symbol or tower, cupola, clock tower, sign, etc.), the installation shall blend in the predominant visual backdrop so it appears to be a decorative and attractive architectural feature.

2. For Class 2 (Visible) Antenna Installations:

   a. Building or structure mounted Antennas shall be painted or otherwise coated to match or complement the predominant color of the structure on which they are mounted and shall be compatible with the architectural texture and materials of the building to which the Antennas are mounted. No cables and mounting brackets or any other associated equipment or wires shall be visible from above, below or the

side of the Antennas. [Comment: If the facility is visible, will this actually be possible?]

b. All Antenna components and Support Equipment shall be treated with exterior coatings of a color and texture to match the predominant visual background and/or adjacent architecture so as to visually blend in with the surrounding development. Subdued colors and non-reflective materials that blend with surrounding materials and colors shall be used.

3. For Class 3 (Public Right-of-Way) Antenna Installations:

   a. Whenever Feasible, new Antennas proposed to be installed in the public right-of-way shall be placed on existing or replacement utility structures, light standards, or other existing vertical structures. Antenna installations on existing or replacement streetlight poles [are these prohibited?], traffic control standards, or Utility Poles shall be screened by means of canisters, radomes, shrouds other screening measures whenever Feasible, and treated with exterior coatings of a color and texture to match the existing pole.

   b. If Antennas are proposed to be installed without screening, they shall be flush-mounted to the pole and shall be treated with exterior coatings of a color and texture to match the existing pole.

   c. If a new pole is proposed to replace an existing pole, the replacement pole shall be consistent with the size, shape, style and design of the existing pole, including any attached light arms.

4. For Class 4 (Freestanding Structure) Antenna Installations:

   a. For a false rock, the proposed screen structure shall match in scale and color other rock outcroppings in the general vicinity of the proposed site. A false rock screen may not be considered appropriate in areas that do not have natural rock outcroppings.

   b. The installation of a false tree (such as but without limitation a monopine or monopalm, or false shrubbery) shall be designed for and located in a setting that is compatible with the proposed screening method. Such installations shall be situated so as to utilize existing natural or manmade features including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening. For false trees or shrubbery installations, all Antennas and Antenna supports shall be contained within the canopy of the tree design, and other vegetation comparable to that replicated in the proposed screen structure shall be prevalent in the immediate vicinity of the antenna site, and the addition of new comparable living vegetation may be necessary to enhance the false tree or shrubbery screen structure.

c. For installations of a flagpole, the pole shall not exceed 24 inches in width at the base of the flagpole and also shall not exceed 20 inches in width at the top of the flagpole.

5. For Class 5 (Temporary) Antenna Installations:

   a. A temporary Telecom Facility installation may require screening to reduce visual impacts depending on the duration of the permit and the setting of the proposed site. If screening methods are determined to be necessary by the review authority, the appropriate screening methods will be determined through the permitting process reflecting the temporary nature of the Telecom Facility.

6. Support Equipment. All Support Equipment associated with the operation of any Telecom Facility shall be placed or mounted in the least visually obtrusive location practicable~~possible~~, and shall be screened from view.

   a. Installations on Private Property. The following is a non-exclusive list of potential screening techniques for Telecom Facilities located on private property:

      (1) Building-Mounted Facilities. For building or structure-mounted Antenna installations, Support Equipment for the Telecom Facility may be located inside the building, in an underground vault, or on the roof of the building that the Telecom Facility is located on, provided that both the equipment and any screening materials are architecturally compatible and/or painted the color of the building, roof, and/or surroundings thereby providing screening. If placed in an underground vault, flush-to-grade vents, or vents that extend no more than 24 inches above the finished grade and are screened from public view may be incorporated.

      (2) Roof-Mounted Facilities. All screening materials for roof-mounted Telecom Facilities shall be of a quality and design compatible with the architecture, color, texture and materials of the building to which it is mounted. If determined necessary by the review authority, screening to avoid adverse impacts to views from land or buildings at higher elevations shall be required.

      (3) Freestanding Facilities. For freestanding Telecom Facilities installations, not mounted on a building or structure, Support Equipment for the Telecom Facility may be visually screened by locating the Support Equipment in a fully enclosed building, in an underground vault, or in a security enclosure consisting of walls and/or landscaping to effectively screen the Support Equipment at the time of installation.

      (4) All wall and landscaping materials shall be selected so that the resulting screening will be visually integrated with the architecture and landscape architecture of the surroundings.

(5) Screening enclosures may utilize graffiti-resistant and climb-resistant vinyl-clad chain link with a “closed-mesh” design (i.e. one-inch gaps) or may consist of an alternate enclosure design approved by the review authority. In general, the screening enclosure shall be made of non-reflective material and painted to blend with surrounding materials and colors.

(6) If placed in an underground vault, flush-to-grade vents, or alternatively, vents that extend no more than 24 inches above the finished grade and are screened from public view may be utilized.

b. Installations in a Public Right-of-Way. The following is a non-exclusive list of potential screening techniques for Telecom Facilities located in a public right-of-way:

(1) Where the existing utilities services (e.g., telephone, power, cable TV) are located underground, the Support Equipment shall be placed underground, consistent with Chapter 13.20. Flush-to-grade underground vault enclosures, including flush-to-grade vents, or vents that extend no more than 24 inches above the finished grade and are screened from public view may be incorporated. Electrical meters required for the purpose of providing power for the proposed Telecom Facility may be installed above ground on a pedestal in a public right-of-way.

(2) Support equipment approved to be located above ground in a public right-of-way shall be painted or otherwise coated to be visually compatible with the existing or replacement pole, lighting and/or traffic signal equipment without substantially increasing the width of the structure.

(3) All transmission or amplification equipment such as remote radio units, tower mounted amplifiers and surge suppressors shall be mounted inside the streetlight pole or traffic control standard without increasing the pole diameter or shall be installed in a flush-to-grade vault enclosure adjacent to the base of the pole.

G. Night Lighting. Telecom Facilities shall not be lighted except for security lighting at the lowest intensity necessary for that purpose or as may be recommended by the U.S. Flag Code. Such lighting shall be shielded so that direct illumination does not directly shine on nearby properties. The review authority shall consult with the Police Department regarding proposed security lighting for Telecom Facilities on a case-by-case basis.

H. Signs and Advertising. No advertising signage or identifying logos shall be displayed on any Telecom Facility except for small identification, address, warning, and similar information plates. Such information plates shall be identified in the telecom application and shall be subject to approval by the review authority. Signage required by state or federal regulations shall be allowed in its smallest permissible size.

I. Nonconformities. A proposed Telecom Facility shall not create any new or increased nonconformity as defined in the Zoning Code, such as, but not limited to, a reduction in and/or elimination of, required parking, landscaping, or loading zones unless relief is sought pursuant to applicable Zoning Code procedures.

J. Maintenance. The Telecom Operator shall be responsible for maintenance of the Telecom Facility in a manner consistent with the original approval of the Telecom Facility, including but not limited to the following:

1. Any missing, discolored, or damaged screening shall be restored to its original permitted condition.

2. All graffiti on any components of the Telecom Facility shall be removed promptly in accordance the Newport Beach Municipal Code.

3. All landscaping required for the Telecom Facility shall be maintained in a healthy condition at all times, and shall be promptly replaced if dead or dying, or damaged [e.g. branches broken off in a storm or otherwise. Tree is still alive, but not what it once was.].

4. All Telecom Facilities shall be kept clean and free of litter.

5. All equipment cabinets shall display a legible contact number for reporting maintenance problems to the Telecom~~Facility~~ Operator.

6. If a flagpole is used for a Telecom Facility, flags shall be flown and shall be properly maintained at all times. The use of the United States flag shall comply with the provisions of the U.S. Flag Code (4 U.S.C. § 1 *et seq.*).

20.49.070 – Permit Review Procedures.

A. Application Procedures. Applications for Telecom Facilities shall be subject to Chapters 20.50, 20.52, and 20.54 unless otherwise modified by this Section.

B. Permit Required. All Telecom Facilities shall obtain a MUP, CUP, LTP, or ZC if not prohibited by subsection 20.49.050.B, depending on the Antenna Class and location, as specified in the Table 4-1:

Table 4-1

Permit Requirements for Telecom Facilities

Location of Proposed Telecom Facility	Antenna Class and Permit Requirement				
	Class 1 (a)	Class 2 (a) (b)	Class 3 (a) (b)	Class 4 (a) (b)	Class 5 (a)
Facility located in any Zoning District, Planned Community, or Specific Plan within 150 feet of any Residential District or their equivalent residential land use designation within a Planned Community District or Specific Plan.	ZC	MUP	MUP	MUP	LTP
Facility not located in the area identified in Subsection 1 [of what?]but located in or within 150 feet of Open Space Districts (OS), Public Facilities Districts (PF), Parks and Recreation Districts (PR), or their equivalent land use designations within a Planned Community District or Specific Plan.	ZC	MUP	MUP	CUP	LTP
Facility not located in the other areas identified	ZC	CUP	MUP	CUP	LTP

(a) Any application for a Telecom Facility that proposes to exceed the base height limit of the applicable zoning district in which the Telecom Facility is located shall require the issuance~~require review and action~~ of a CUP by the Planning Commission.

(b) DAS installed on an existing streetlight pole, existing utility pole or other existing structure may be allowed subject to issuance of a Zoning Clearance (ZC) when the Director determines the Facility complies with the screening requirements.

~~(b)~~(c) [Comment: I am sure I missed this, but where is it set forth who the review authority is for each of a MUP, CUP and LTP? The staff report indicated the Planning Commission would be the initial review authority only for the "most visible proposals". How does this work?]

C. Application Submission Requirements for Telecom Facilities on City-owned or City-held Trust Properties. Prior to the submittal for any application for any Telecom Facility located on any City-owned property or City-held trust property, the applicant shall first obtain written authorization from the City Manager or its designee to submit an application.

D. Fee. All costs associated with the permit application review shall be the responsibility of the applicant, including any expense incurred for any outside technical or legal services in connection with the application.

E. Review Process. Review of applications for all Telecom Facilities in City shall be consistent with Chapter 20.50 (Permit Application Filing and Processing), and the FCC Declaratory Ruling FCC 09-99 ("Shot Clock") deadlines.

F. Review of Collocated Facilities. Notwithstanding any provision of this Chapter to the contrary, pursuant to California Government Code section 65850.6 (as amended or superseded), the addition of a new Telecom Facility to an existing Telecom Facility resulting in the establishment of a Collocated Telecom Facility shall be allowed without a discretionary review provided it meets section 20.49.100. If such a Collocated Telecom Facility does not satisfy all of the requirements of Government Code section 65850.6 and Section 20.49.100, the facility shall be reviewed pursuant the review procedures provided in Table 4-1.

G. Emergency Communications Review. At the time an application is submitted to the Community Development Department, a copy of the Plans, Map, and Emission Standards shall be sent to the Chief of the Newport Beach Police Department. The Police Department or its designee shall review the plan's potential conflict with emergency communications. The review may include a pre-installation test of the Telecom Facility to determine if any interference exists. If the Police Department determines that the proposal has a high probability that the Telecom Facility will interfere with emergency communications devices, the applicant shall work with the Police Department to avoid interference.

H. Public Notice and Public Hearing Requirements. An application for a MUP, CUP or LTP shall require a public notice, and a public hearing shall be conducted, in compliance with Chapter 20.62 (Public Hearings).

I. Required Findings for Telecom Facilities. The following findings shall apply to all Telecom Facilities requiring discretionary review:

1. General. The review authority may approve or conditionally approve an application for a Telecom Facility only after first finding each of the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits), and each of the following:

    a. The proposed Telecom Facility is visually compatible with the surrounding neighborhood.

    b. The proposed Telecom Facility complies with the technology, height, location and design standards, as provided for in this Chapter.

    c. An alternative site(s) located further from a Residential District, Public Park or Public Facility cannot ~~f~~Feasibly fulfill the coverage needs fulfilled by the installation at the proposed site.

d. An alternative Antenna construction plan that would result in a higher priority Antenna Class category for the proposed Telecom Facility is not available or reasonably Feasible and desirable under the circumstances.

2. Findings to Increase Height. The review authority may approve, or conditionally approve an application for a Telecom Facility which includes a request to exceed the base height limit for the zoning district in which the Telecom Facility is located only after making each of the following findings in addition to the required findings above, as well the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits):

   a. The increased height will not result in undesirable or abrupt scale changes or relationships being created between the proposed Telecom Facility and existing adjacent developments or public spaces. [Comment: Is it possible to have an abrupt scale change that is not undesirable?]

   b. Establishment of the Telecom Facility at the requested height is necessary to provide service.

20.49.080 – Permit Implementation, Time Limits, Extensions, and Appeals.

A. The process for implementation or "exercising" of permits issued for a Telecom Facility, time limits, and extensions, shall be in accordance with Chapter 20.54 (Permit Implementation, Time Limits, and Extensions).

B. Appeals. Any appeal of the decision of the review authority of an application for a Telecom Facility shall be processed in compliance with Chapter 20.64 (Appeals).

20.49.090 – Agreement for Use of City-Owned or City-Held Trust Property.

When applying for a permit pursuant to this Chapter, all Telecom Facilities located on City-owned or City-held trust property shall require a license agreement approved as to form by the City Attorney, and as to substance (including, but not limited to, compensation, term, insurance requirements, bonding requirements, and hold harmless provisions) by the City Manager, consistent with provisions in the City Council Policy Manual.

Prior to entering into an agreement, the applicant shall obtain a MUP, CUP, LTP or ZC. Upon the issuance of a MUP, CUP, LTP or ZC, as required, and upon entering into an agreement, the applicant shall obtain any and all necessary ministerial permits, including, encroachment permits for work to be completed in the public right-of-way, and building permits, etc. All costs of said permits shall be at the sole and complete responsibility of the applicant. All work shall be performed in accordance with the applicable City standards and requirements.

20.49.100 – Modification of Existing Telecom Facilities.

Notwithstanding any provision in this Chapter of the Zoning Code, a request to modify an existing Facility that involves the Collocation of new transmission equipment, the removal of existing transmission equipment, or the replacement of existing transmission equipment shall be subject to a ministerial review and approval of a ZC without ~~the~~ processing ~~of~~ any discretionary permit provided that such modification does not substantially change the existing Facility from the original permit for the Facility. A substantial change means a single change, or series of changes over time that exceeds five percent (5%) of the physical dimension of the Telecom Facility approved as part of the original discretionary permit.

Each application submitted under this section for a modification to an existing Telecom Facility shall be accompanied by:

1. A detailed description of the proposed modifications to the existing Telecom Facility(ies);

2. A photograph or description of the Telecom Facility as originally constructed, if available; a current photograph of the existing Telecom Facility; and, a graphic depiction of the Telecom Facility after modification showing all relevant dimensions;

3. A detailed description of all construction that will be performed in connection with the proposed modification; and

4. A written statement signed and stamped by a professional engineer, licensed and qualified in California, attesting that the proposed modifications do not constitute a substantial change of the existing permitted facility.

Any permit issued will be conditioned upon, and may be revoked, and the Telecom Facility shall be required to be removed or restored to its pre-modification condition if:

a. Any material statement made with respect to the Telecom Facility is false; or

b. The modifications as actually made would have requiredtriggered a discretionary review had the plan for the Telecom Facility depicted the modifications.

20.49.110 – Operational and Radio Frequency Compliance and Emissions Report.

At all times, the operator shall ensure that its Telecom Facilities shall comply with the most current regulatory, operations standards, and radio frequency emissions standards adopted by the FCC. The operator shall be responsible for obtaining and maintaining the most current information from the FCC regarding allowable radio frequency emissions and all other applicable regulations and standards. Said information shall be made available by the operator upon request at the discretion of the Community Development Director.

Within thirty (30) days after installation of a Telecom Facility, a radio frequency (RF) compliance and emissions report prepared by a qualified RF engineer acceptable to the City shall be submitted in order to demonstrate that the Telecom Facility is operating at the approved

frequency and complies with FCC standards for radio frequency emissions safety as defined in 47 C.F.R. § 1.1307 *et seq*. Such report shall be based on actual field transmission measurements of the Telecom Facility operating at its maximum effective radiated power level, rather than on estimations or computer projections. If the report shows that the Telecom Facility does not comply with the FCC's 'General Population/Uncontrolled Exposure' standard as defined in 47 C.F.R. § 1.1310 Note 2 to Table 1, the Director shall require that use of the Telecom Facility be suspended until a new report has been submitted confirming such compliance.

Upon any proposed increase of at least ten percent (10%) in the effective radiated power or any proposed change in frequency use of the Telecom Facility by the Telecom Operator, the Telecom Operator shall be required to provide an updated, certified radio frequency (RF) compliance and RF emissions safety report.

A qualified independent radio frequency engineer selected and under contract to the City, may be retained to review said certifications for compliance with FCC regulations. All costs associated with the City's review of these certifications shall be the responsibility of the permittee, which shall promptly reimburse City for the cost of the review.

20.49.120 – Right to Review or Revoke Permit.

The reservation of right to review any permit for a Telecom Facility granted by the City is in addition to, and not in lieu of, the right of the City to review and revoke or modify any permit granted or approved hereunder for any violations of the conditions imposed on such permit.

20.49.130 – Removal of Telecom Facilities.

A. Discontinued Use. Any Telecom Operator who intends to abandon or discontinue use of a Telecom Facility must notify the Community Development Director by certified mail no less than thirty (30) days prior to such abandonment or discontinuance of use. The Telecom Operator or owner of the affected real property shall have ninety (90) days from the date of abandonment or discontinuance, or a reasonable additional time as may be approved by the Community Development Director, within which to complete one of the following actions:

1. Reactivate use of the Telecom Facility.

2. Transfer the rights to use the Telecom Facility to another Telecom Operator and the Telecom Operator immediately commences use within a reasonable period of time as determined by the Community Development Director.

3. Remove the Telecom Facility and restore the site.

B. Abandonment. Any Telecom Facility that is not operated for transmission and/or reception for a continuous period of ninety (90) days or whose Telecom Operator did not remove the Telecom Facility in accordance with Subsection A shall be deemed abandoned. Upon a finding of abandonment, the City shall provide notice to the Telecom Operator last known

to use such Facility and, if applicable, the owner of the affected real property, providing thirty days from the date of the notice within which to complete one of the following actions:

1. Reactivate use of the Telecom Facility.

2. Transfer the rights to use the Telecom Facility to another Telecom Operator who has agreed to reactivate the Telecom Facility within 30 days of the transfer.

3. Remove the Telecom Facility and restore the site.

C. Removal by City.

1. The City may remove an abandoned Telecom Facility, repair any and all damage to the premises caused by such removal, and otherwise restore the premises as is appropriate to be in compliance with applicable codes at any time after thirty (30) days following the notice of abandonment.

2. If the City removes an abandoned Telecom Facility, the City may, but shall not be required to, store the removed Telecom Facility or any part thereof. The owner of the premises upon which the abandoned Telecom Facility was located and all prior operators of the Telecom Facility shall be jointly liable for the entire cost of such removal, repair, restoration and storage, and shall remit payment to the City promptly after demand therefore is made. In addition, the City Council, at its option, may utilize any financial security required in conjunction with granting the telecom permit as reimbursement for such costs. Also, in lieu of storing the removed Telecom Facility, the City may convert it to the City's use, sell it, or dispose of it in any manner deemed by the City to be appropriate.

D. City Lien on Property. Until the cost of removal, repair, restoration, and storage is paid in full, a lien shall be placed on the abandoned personal property and any real property on which the Telecom Facility was located for the full amount of the cost of removal, repair, restoration and storage. The City Clerk shall cause the lien to be recorded with the Orange County Recorder, with the costs of filing, processing, and release of such City Lien being added to the other costs listed in this subsection.